

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

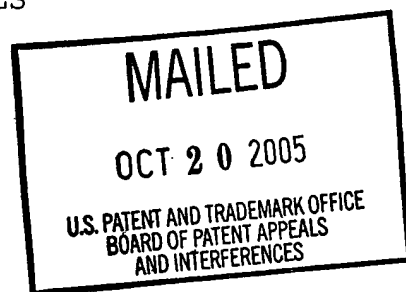
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte EVAN SUNDQUIST

Appeal No. 2005-2749
Application No. 09/762,781

ON BRIEF



Before KIMLIN, WARREN and KRATZ, Administrative Patent Judges.
KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 2, 4, 27, 28 and 29. Claims 3 and 5-26 stand withdrawn from consideration pursuant to a restriction requirement. The examiner relies upon the following references as evidence of obviousness:

Jones, Sr. (Jones)
Morin et al. (Morin)

3,784,998
6,189,189 B1

Jan. 15, 1974
Feb. 20, 2001

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Appellant's claimed invention is directed to a wiper cloth comprising a hexagonal sheet which boundaries extend in a substantially continuous unbroken relation around the interior portion of the cloth.

Appealed claims 1, 2, 28 and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Jones. Claims 1, 2, 4, 27 and 28 also stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Morin.

Appellant does not separately group the claims on appeal nor offer separate arguments for any particular claim on appeal. Accordingly, the groups of claims separately rejected by the examiner stand or fall together with claim 1.

We have thoroughly reviewed each of appellant's arguments for patentability. However, we are in complete agreement with the examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of Section 103 in view of the applied prior art. Accordingly, we will sustain the examiner's rejections for essentially those reasons expressed in the answer, and we add the following primarily for emphasis.

We consider first the examiner's Section 103 rejection over Jones. Appellant does not dispute that Jones, like appellant,

discloses a wiper cloth comprised of a hexagonal sheet material. However, as appreciated by the examiner, Jones does not disclose that the hexagonally-shaped wiper cloth has a continuous, unbroken edge boundary. The edge boundary of Jones' hexagonal cloth is broken by slits. However, we agree with the examiner that it would be obvious to one of ordinary skill in the art to eliminate the slits in the hexagonal cloth of Jones along with their attendant advantages. It is well settled that the omission of a feature disclosed by the prior art along with its attendant function is a matter of obviousness for one of ordinary skill in the art. In re Thompson, 545 F.2d 1290, 1294, 192 USPQ 275, 277 (CCPA 1976); In re Kuhle, 526 F.2d 553, 555, 188 USPQ 7, 9 (CCPA 1975); In re Porter, 68 F.2d 971, 973, 20 USPQ 298, 301 (CCPA 1934). In the present case, although appellant contends that removing the slits of the Jones along with the resultant applicator leaves "would greatly reduce the effected surface area for agent application" (page 4 principal brief, second paragraph), we are convinced that one of ordinary skill in the art would have found it obvious to forego increased surface area for the reduction in cost of manufacture.

Appellant also maintains that "the proposed elimination of the handle would force the user to grasp the body of the

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applicator which will be saturated with the agent to be applied such as shoe polish, soap or the like" (id.). However, while it would have been obvious to eliminate the handle along with its advantage, it is also not necessary to eliminate the handle along with the slits in the cleaning cloth. Rather, one of ordinary skill in the art would have found it obvious to form a slit only in the thick first applicator support sheet 11 to form the multiple handle flaps 12.

We now turn to the examiner's Section 103 rejection over Morin. As acknowledged by appellant, Morin discloses a wiper cloth having an edge boundary extending in substantially continuous unbroken relation around the interior portion, and teaches that "[a]ny geometric shape may be employed as the shape of the inventive wipes" (column 3, lines 56-57). As a result, we agree with the examiner that, prima facie, one of ordinary skill in the art would have found it obvious to select a hexagon as the geometric shape for the wiper cloth of Morin. Although appellant contends that there is no specific teaching in Morin to employ a geometric shape, it has generally been held that it is a matter of obviousness for one of ordinary skill in the art to change the size or shape of a prior art article in the absence of unexpected results. See, for example, In re Woodruff, 919 F.2d 1575, 1578,

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16 USPQ2d 1934, 1936 (Fed. Cir. 1990); In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). In the present case, although appellant asserts certain advantages for configuring a wiper cloth as a hexagon rather than as a square or rectangle, such as a decrease in contamination by cut threads, appellant has provided no objective evidence which establishes that such advantages would have been considered unexpected by one of ordinary skill in the art. In re Merck & Co., 800 F.2d 1091, 1099, 231 USPQ 375, 381 (Fed. Cir. 1986); In re Klosak, 455 F.2d 1077, 1080, 173 USPQ 14, 16 (CCPA 1972). It is by now axiomatic that the burden of showing unexpected results rests on the party asserting them and, in the present case, appellant has not shouldered this burden.

We also concur with the examiner's rationale that one of ordinary skill in the art would have found it obvious to "use known general geometry formulas to compare the surface areas to the edge perimeter; thereby, giving one of ordinary skill in the art the ability to determine the optimum shape to get a greater surface area with less contamination from particulate matter, be it a hexagon or square" (page 5 of answer, second paragraph).


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As a final point, as alluded to above, appellant bases no argument upon objective evidence of nonobviousness such as unexpected results, which would serve to rebut the prima facie case of obviousness established by the examiner.

In conclusion, based on the foregoing and the reasons well-stated by the examiner, the examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED


EDWARD C. KIMLIN)
Administrative Patent Judge)
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CHARLES F. WARREN)
Administrative Patent Judge)
)

BOARD OF PATENT
APPEALS AND
INTERFERENCES


PETER F. KRATZ)
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